STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 20, 2007
v	No. 265804 Saginaw Circuit Court
RODERICK GERALD SMITH, Defendant-Appellant.	LC No. 05-025813-FC

Before: Smolenski, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of assault with intent to rob while armed, MCL 750.89, conspiracy to assault with intent to rob while armed, MCL 750.157a, MCL 750.89, assault with intent to do great bodily harm less than murder, MCL 750.84, conspiracy to assault with intent to do great bodily harm less than murder, MCL 750.157a, MCL740.84, third-degree fleeing and eluding, MCL 750.479a(3), and assault with intent to murder, MCL 750.83. Defendant was sentenced as a second-offense habitual offender, MCL 769.10, to concurrent prison terms of 281 to 421 months for assault with intent to rob while armed, 262 to 393 months for conspiracy to assault with intent to rob while armed, 83 to 124 months for assault with intent to do great bodily harm less than murder, 71 to 106 months for conspiracy to assault with intent to do great bodily harm less than murder, 36 to 60 months for third-degree fleeing and eluding, and 356 to 535 months for assault with intent to murder. We affirm.

Defendant argues that insufficient evidence was adduced below to support his assault with intent to rob while armed and conspiracy convictions. We disagree. The fact that defendant's brother, and not defendant, assaulted the victim with a tire iron does not mean that defendant could not be convicted of that armed assault because "a defendant who intends to **aid, abet,** counsel, or procure the commission of *a* crime, is liable for that crime." *People v Robinson*, 475 Mich 1, 1-2; 715 NW2d 44 (2006) (emphasis in original). The testimony of the victim clearly establishes the events of the crimes and the coordinated effort between defendant and his brother. Further, given the coordination of the attack on the victim, it is reasonable to infer that defendant and his brother had entered into a conspiracy to assault and rob the victim. See *People v Carter*, 415 Mich 558, 568; 330 NW2d 314 (1982). Finally, inconsistencies in testimony are for the trier of fact to evaluate. See *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999) (observing that "a jury is free to believe or disbelieve, in whole or in part, any of the evidence presented"). In evaluating the sufficiency of the evidence, we "will not interfere with

the [trier of fact's] role of . . . deciding the credibility of the witnesses." *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

Defendant also asserts that he was denied a fair trial because the trial court allowed testimony regarding the meaning of his brother's nickname. Defendant objected to the introduction of testimony about the meaning of Anatol's nickname, but on the basis of hearsay, not relevance or prejudice. Thus, this issue is not preserved. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Unpreserved error only requires reversal where it was plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). While we agree that this testimony should not have been admitted, the error was harmless and did not affect defendant's substantial rights in light of the weight of the properly admitted evidence. *Carines, supra.*

Defendant also argues that the prosecutor's repeated attempts to introduce evidence regarding prior convictions were misconduct warranting a new trial. We disagree. Prosecutorial misconduct claims are reviewed on a case-by-case basis, looking at the prosecutor's comments in context and in light of the defense arguments and their relationship to evidence admitted at trial. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). Here, any error was ultimately harmless because of the overwhelming evidence presented against defendant. Further, the trial court timely sustained objections to the prosecutor's questions and instructed the jury not to consider evidence the court excluded when deciding the case. "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

We also reject defendant's argument that he was denied effective assistance of counsel because counsel failed to object to raise a MRE 402/403 objection to the admission and use of testimony regarding his brother's nickname, because he failed to disclose key witness statements to the prosecutor in a timely manner, and because he failed to provide transportation to two of those witnesses so they could testify. The right to counsel is guaranteed by the United States and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, § 20. Where the issue is counsel's performance, a defendant must show that (1) counsel's performance was below an objective standard of reasonableness under professional norms, and (2) there is a reasonable probability that, if not for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable. *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 309, 312-313; 521 NW2d 797 (1994).

As noted above, evidence concerning defendant's brother's nickname should not have been admitted. However, given the weight of the evidence against defendant, there was no reasonable probability that the result below would have been different had this evidence been objected to on relevancy/prejudice grounds and excluded.

Defendant's other assertions of misconduct also are without merit. Defendant did not indicate which arguments should have been objected to in the prosecutor's closing argument. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984) (citation internal

quotation marks omitted). However, defendant was not prejudiced by any late witness disclosures, because while the prosecutor objected to their testimony, the trial court overruled those objections and allowed the witnesses to testify. Finally, defendant did not include in his pro se brief on appeal any argument to support his claim of ineffective counsel due to failure to provide transportation to two witnesses so they could testify, so defendant has waived that claim by failing to brief its merits. *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004).

Defendant also asserts he is entitled to relief because the trial court did not properly determine whether he had seen the presentence investigation report and had a chance to discuss it. We conclude that it was error for the trial court not to determine this, MCR 6.425(E)(1), but because defendant has not claimed there were any errors in the report, we find this error harmless. See *People v Jones*, 270 Mich App 208, 212; 714 NW2d 362 (2006).

Lastly, defendant claims his right to a speedy trial as codified in MCR 6.004(D) was violated when his trial took place 181 days after his initial arrest and confinement. We disagree. Defendant failed to raise this issue below, and thus, it is not preserved for appeal. *People v Sean Jones* (*On Rehearing*), 201 Mich App 449, 452; 506 NW 2d 542 (1993). Reversal is required only where defendant establishes plain error affecting his substantial rights. *Carines*, *supra* at 763.

MCR 6.004(D)(1) requires that inmates held by the Department of Corrections must be tried "within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint." Defendant claims his right to a speedy trial was violated because his trial did not commence until July 7, 2005, 181 days after he was first taken into custody. But defendant misstates the rule; the clock on the 180-day rule does not start ticking when defendant is taken into custody, rather, it begins "after the Department of Corrections delivers to the prosecutor notice of the inmate's imprisonment and requests disposition of the pending charge." *People v Williams*, 475 Mich 245, 247; 716 NW2d 208 (2006). Defendant presents no information indicating when this notice occurred, and therefore, defendant has shown nothing on the record to establish plain error affecting his substantial rights.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kurtis T. Wilder